
TESTIMONY
HB899 HD1
LATE

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TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 899, H.D. 1, RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

BEFORE THE:

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

DATE: Wednesday, March 18, 2009 **TIME:** 3:00 PM

LOCATION: State Capitol, Room 229

TESTIFIER(S): Mark J. Bennett, Attorney General
or Brian Aburano, Deputy Attorney General

Chair Hee and Members of the Committee:

The Department of the Attorney General has legal concerns regarding this bill.

This bill seeks to clarify and strengthen the bond authority of the Office of Hawaiian Affairs (OHA) by amending various statutes in chapter 10 of the Hawaii Revised Statutes (HRS). Among the changes are amendments that authorize or empower the OHA Board of Trustees ("OHA board") to: (1) issue and authorize revenue bonds without further legislative authorization and approval; and (2) allocate and use OHA revenues, including appropriations, to pay interest and principal of revenue bonds and secure such bonds.

First, article VII, section 12, of the Hawaii Constitution provides that the State Legislature, by majority vote of the members to which each house is entitled, shall authorize the issuance of all revenue bonds issued by or on behalf of the State. The proposed amendments at page 6, lines 6-8, and page 8, lines 1-2, of the bill are inconsistent with this constitutional requirement as they delete the current statutory requirement of legislative authorization and empower the OHA board to issue revenue bonds "[w]ithout further authorization or approval" The only entities that may issue revenue bonds

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without further authorization or approval of the State Legislature are political subdivisions that the Legislature has authorized by general law to issue such bonds. The constitutional history of article VII, section 2, shows that such political subdivisions are limited to the counties. In the 1950 Constitutional Convention, the word "political subdivision" was substituted for the word "county" in order to prevent the County of Kalawao, which was not a true county, from issuing general obligation and revenue bonds. The discussion of the delegates showed that they intended only the four counties to be able to issue general obligation and revenue bonds. See Proceedings of the Constitutional Convention of Hawaii 1950, Volume II, page 462 (discussion of Delegates Tavares, Heen, and White). In the 1978 Constitutional Convention, the delegates took wording out of a proposal that would have allowed the State legislature by general law to authorize boards or agencies of political subdivisions to issue revenue bonds without further legislative approval. The discussion of the delegates showed that they did not want to open the gate for all kinds of boards and agencies to issue bonds, but to keep the then current simple debt structure that included general obligation and revenue bonds being issued just by the State and the four political subdivisions. See Proceedings of the Constitutional Convention 1978, Volume I, pages 321-322 (discussion of Delegates Izu, Lewis, and Ishikawa).

Second, article VII, sections 12 and 13, of the Hawaii Constitution and their history show that revenue bonds are not to be supported by general appropriations of the State Legislature, but rather are meant to be supported solely by the rates, revenues, charges, or user taxes of the public undertaking, improvement, system, or loan program financed by such bonds. See Proceedings of the Constitutional Convention 1968, Volume II, pages 383-384 and 386 (Delegate Hitch noting that the only security for a revenue bond is the fees and tariffs of that undertaking and that, by definition, revenue bonds stand on their own feet in terms of being supported by the

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revenues of that undertaking.) Article VII, section 12, defines revenue bonds as bonds "payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system or loan program" Article VII, section 13, of the Hawaii Constitution ("article VII, section 13") provides that for a revenue bond to be excludable from the State's debt limit, the issuer must be obligated by law to impose rates, rentals, and charges for the use and services of the public undertaking, improvement, or system or the benefits of the loan program, or user taxes, or a combination of both, sufficient to pay: (a) the cost of the public undertaking, improvement, system, or loan program; and (b) the principal and interest of all revenue bonds issued for the public undertaking, improvement, system, or loan program.

The amendments to section 10-31, HRS, at page 16, line 20 to page 17, line 3, and to section 10-30, HRS, at page 15, line 22 and page 16, line 10, of the bill appear to be inconsistent with the foregoing definitions and restrictions applicable to revenue bonds. The amendments do away with wording requiring office projects financed by revenue bonds to be self-supporting through rates, rents, fees, and charges. Compare HRS § 49-11 (undertakings and loan programs under county revenue bonds to be self-sustaining). The amendments to section 10-31 also provide that "revenues of the office" may be used to pay the costs of office projects and all bonds and interest thereon. There is no definition in HRS chapter 10 of "revenues of the office." Revenues of the office could, therefore, include general fund appropriations as well as other funds that may not constitute the types of funds that may be used under article VII, sections 12 and 13, of the Hawaii Constitution to pay and secure revenue bonds, i.e., rates, rentals, charges or user taxes. Compare HRS § 304A-2680 (no holder of a revenue bond issued by the University of Hawaii may compel the making of any appropriation to pay revenue bonds or interest thereon) and HRS § 304A-2688 (nothing in University of Hawaii revenue bond statutes shall be construed to authorize board of regents to incur any indebtedness

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contrary to the State Constitution or that would be required to be included in the calculation of the State's indebtedness).

The Department of the Attorney General has been working with OHA and its counsel in drafting amended language for this bill that seeks to address the above-referenced concerns.

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